

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 1097/2020, CRL.M.(BAIL) 6446/2020,**
CRL.M.(BAIL) 8127/2020, CRL.M.A.13702/2020

Judgment reserved on : 24.11.2020

Date of decision: 01.12.2020

V. HANSPRAKASH (THROUGH PAIROKAR)..... Applicant

Through: Mr. N. Hariharan, Sr. Adv. with Mr.
Shadman Siddiqui, Mr. Anurag Nasir,
Mr. K. Luthra, Advs.

Versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State.
Mr. Jatin Sehgal & Mr. Harish Malik,
Advs. for complainant.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The applicant, vide the present application seeks the grant of regular bail in relation to FIR No.46/2019, PS EOW, New Delhi under Sections 406/420/467/468/471/120B of the Indian Penal Code, 1860 submitting to the effect that the applicant has been arrested on 04.02.2020 and the charge sheet in the instant case has already been

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filed on 11.11.2019 which had been filed without the arrest of the applicant and that on receipt of summons from the Trial Court, the applicant appeared before the learned ACMM, East District, KKD Courts, New Delhi and filed the first bail application which was dismissed by the learned ACMM erroneously and the applicant was taken into custody. The second bail application filed by the applicant was also dismissed by the learned ASJ vide order dated 12.02.2020 and that the prayer made by the applicant seeking interim bail on the account of his wife's illness was also dismissed on 15.04.2020 by the Court of the learned ASJ.

2. During the course of hearing of the present bail application, it was submitted on behalf of the applicant on 15.06.2020 that submissions made in CRL.M.(BAIL) 6446/2020 for the grant of interim bail may be read as additional grounds to the prayer made by the applicant seeking the grant of regular bail and may be considered at the stage of consideration of the main bail application in toto.

3. The status report dated 11.06.2020 submitted under the signatures of the Assistant Commissioner of Police, Sector-IV, EOW, Delhi states to the effect that a complaint of M/s Dalmia Cements

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Bharat Ltd. against M/s Allied Financial Services Pvt. Ltd. & Ors was received in EOW regarding fraudulent transfer of Mutual Funds Units/securities worth Rs.344.07 Crores of the complainant. It is submitted further through the said status report that the erstwhile subsidiaries of the complainant company namely OCL India Cements Ltd. and Dalmia Cement East Limited were interested in making mutual fund investments in May 2017 and availed the services of the Depository i.e. National Securities Depository Limited (NSDL) and its participant Allied Financial Services Pvt. Ltd. (AFSPL) and AOF were signed and demat accounts with client ID No. 10061626 in the name of OCL Cements Ltd. (OCL) and Client ID No. 10061329 in the name of Dalmia Cements East Ltd. (DCEL) were opened and after making initial investment, several further investments and redemptions were made in the said accounts from time to time and the complainant held securities worth Rs.344.07 Crores in the said accounts as on 28.12.18 and that the said two companies i.e. OCL and DCEL were merged into Dalmia Cements Bharat Ltd. (DCBL) and DCBL became the owner of securities.

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4. It has further been submitted therein that the complainant submitted redemption dated 27.12.18 to AFSPL as per rules and market practice and the redemption value of the securities should have been credited into the account by 28.12.18 but despite various requests/emails, the redemption amount was not credited in the accounts and on 17.01.19, the complainant reported the matter to NSDL and the NSDL vide its reply dated 25.01.19 informed that there were no securities available in the DMAT accounts of the complainant.

5. Sh. Awanish Kumar Mishra, Director of AFSPL vide his email dated 31.01.19 again confirmed the complainant's holding in the above DMAT accounts and regretted delay in processing of redemption request and assured that the same would be processed by 06.02.19 and the Samples of Delivery Instruction Slips (DIS slips) provided by NSDL were also stated to be allegedly forged and fabricated, as the complainant never signed the DIS slips nor did it give any consent for transfer. The details of the alleged fraudulent transaction from the DEMAT accounts with Client ID No. 10061626 in the name of OCL Cement Limited {"OCL"}) and client ID No. 10061329 in the name of

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Dalmia Cement East Limited ("DCEL") held with Allied Financial Services Pvt Ltd. is stated in the said status report to the effect:-

A- OCL India Ltd (Client ID 10061626)

S. No.	Name of mutual funds	ISIN	Units
1.	DSP-Black Rock Low Duration Fund-Regular Plan-Growth	INF740K018P2	12602182.698
2.	DSP Mutual Fund Liquidity Fund Insti Plan Growth Open End	INF740K01FK9	222116.276
3.	Kotak Mahindra Mutual Fund Bond Short Term Reg Growth	1NF174K01ES7	3516935.686
4.	Reliance Mutual Fund Liquid FD Grw PL Growth	INF204K01UN9	98375.733
5.	UTI Liquid Cash Plan-Institutional Option - Growth	INF789FF01PH1	489790.286

B. Dalmia Cement East Limited (Client ID 10061329)

S. No.	Name of mutual funds	ISIN	Units
1.	DSP Mutual Fund Low Duration FD Reg Growth OP	INF740K018P2	50435849.802.

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6. It was further submitted through the said status report that the investigation revealed that the said units of Mutual Funds worth Rs.344.07 Crores were fraudulently transferred in favour of Allied Financial Services Pvt. Ltd. (Depository Participant/Intermediary), who further pledged it with IL & FS Securities Services Ltd. Sh.Awanish Kumar Mishra, Director of Allied Financial Services Pvt Ltd is alleged to have fraudulently transferred the credentials of the complainant in the account opening form and fed wrong credentials on NSDL server to deprive the complainant from getting an alert message for each transaction and that the accused Awanish Kumar Mishra further fraudulently transferred the mutual fund units of the complainant worth Rs.344.07 crores by using delivery instruction slips bearing forged signatures of authorized signatories of the complainant companies. As per the said status report, the said mutual fund units were further pledged to IL&FS Securities Services Ltd (ISSL) for getting margin in derivative trading segments and ISSL and its officials namely V. Hansprakash i.e. the present applicant herein malafidely facilitated the accused Awanish Kumar Mishra and AFSP in using the said fraudulently transferred mutual fund units for margin.

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7. As per the status report submitted by the State through the investigation conducted so far, the role alleged against the accused V. Hansprakash is as under:-

“1. He was the Head of Business Department and Chief Business Strategy Officer of the IL & FS Securities Services Ltd.

2. He also suggested that intraday benefits be extended over and above available collaterals to some selected client, which resulted in facilitation to the AFSPL.

3. As per Grant Thornton Forensic Audit report, Mr V. Hansprakash potentially changed the data which was sent to exchange as well as to bank.

4. He also sent data to the exchange without reducing the collaterals value by the hair cut as defined by the exchange, which is potential violation of the exchange rules. By these acts, he facilitated the AFSPL to commit crime.

5. Being Chief Business Strategy head and responsible person of the company, in connivance with AFSPL, he actively facilitated the AFSPL to commit fraudulent transfer of the mutual fund units.”

8. *Inter alia* it was submitted through the said status report dated 11.06.2020 that during the course of investigation, the applicant joined investigation as and when required and after completion of investigation, the charge sheet was filed before the trial court against accused Allied Financial Services Pvt Ltd, its director Awanish Kumar Mishra for fraudulent transfer of mutual fund and IL&FS Security Services Ltd and against the present applicant Chief Business Head

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V. Hansprakash for facilitating him in utilization of the said mutual fund worth Rs.344.07 Crores of the complainant from its demat account for getting margin in derivative trading.

9. Through its reply dated 09.06.2020, the complainant has submitted that admittedly it only had a DMAT account and had no trading account and as such there was no cause/opportunity to transfer the mutual fund units of INR 344.07 Crores belonging to the complainant from its DMAT account to the trading accounts of the accused and that the applicant arrayed as accused No.4 in collusion and conspiracy with the other accused violated the securities laws and forged and fabricated DISs in order to criminally misappropriate the mutual funds units of INR 344.07 Crores belonging to the complainant, and as a consequence thereof, the complainant being a public limited company cannot use its own money for meeting its day to day operations including paying salaries to its employees.

10. The complainant has further alleged that the applicant and the co-accused has received a premium of INR 380 Crores fraudulently by using the mutual fund units of INR 344.07 Crores of the Complainant as their own margin money and a wrongful gain of INR 380 crores has

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accrued to the applicant/accused No.4 and other accused. *Inter alia* the complainant has submitted that on 04.12.2018 ISSL/Accused No.3 i.e. a part of IL&FS Group, committed a fraud of INR 90,000 crores by forming 350 shell companies and thus, the Central Government sacked its entire board on the ground of oppression and mismanagement of the company and as per the media report dated 28.02.2020, IL&FS Group is also facing investigation for money laundering of over INR 6500 Crores.

11. *Inter alia* it has been submitted on behalf of the complainant whilst opposing the prayer made by the applicant seeking the grant of bail that if at this crucial stage of investigation, the applicant is released, there is every likelihood that he will not allow to unearth the amount of INR 380 Crores received as premium by fraudulently using the mutual fund units of INR 344.07 Crores of the Complainant as his own margin money and this aspect still needs to be investigated and as such the State and SFIO are currently investigating into the matter. The complainant has submitted that the DMAT accounts opened by the accused No.2 & 3 were opened only for the purpose of holding and redemption of mutual fund units belonging to the complainant and

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could not have been used for trading and any other related purposes and that both the OCL and DCEL erstwhile subsidiaries of Dalmia Cement Bharat Limited i.e. of the complainant had never opened any trading account nor given any power of attorney to the accused no.2 to do the same on their behalf.

12. It was further submitted by the complainant adverting to critical findings in the charge sheet to the effect:-

“i. Awanish Kumar Mishra/Accused No.1 in collusion and conspiracy with the Applicant/Accused No.4, malafidely and dishonestly, had not only forged mobile number, email id and correspondence address mentioned in the account opening forms/KYC's of Erstwhile Subsidiaries of Complainant but also uploaded fake mobile number, fake email id, and fake address supported by fake address proof of its Erstwhile Subsidiaries on the portal/website of NSDL so that Erstwhile Subsidiaries of the Complainant could not get/receive any transaction alert from NSDL.

ii. The Accused No.1, in collusion and in conspiracy with the Applicant/Accused No.4, had illegally, dishonestly and fraudulently transferred the Securities from Demat Accounts of Erstwhile Subsidiaries of Complainant to their own account(s) and its related entities based on forged Delivery Instruction Slips and further, fraudulently placed these Securities as collateral with ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head) for meeting its own margin obligations in future and option contracts without consent, knowledge or mandate of the Complainant, who neither issued any mandate for transfer of the Securities nor received any consideration for such transfer thereof.

iii. Pursuant to taking above position in future and option contracts by fraudulently using the Securities of the Complainant as its own margin money by Allied/Accused No.2 with ISSL/Accused No.3 (where Applicant/Accused No.4 was working as Business Head) , the Accused

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Persons had received a sum of INR 380 Crores towards premium, and thus, Applicant/Accused No.4 along with other Accused Persons gained a sum of INR 380 crores illegally and wrongfully by causing illegal and wrongful loss to the Complainant to the tune of INR 344.07 Crores.

iv. Allied/Accused No.2 used to send forged and fabricated Statement of Holdings from time to time in respect of Demat Accounts just to make the Complainant believe that its Securities are intact in their Demat accounts.

v. Forensic Science Laboratory Report ("FSL Report") filed along with the Charge Sheet, also confirmed that the signatures of authorized signatories of the Complainant on all sixty-six (66) Delivery Instructions Slips are forged by Accused Persons which were used by Accused Persons for fraudulent transfer of Securities from Demat Accounts of Erstwhile Subsidiaries of Complainant to their own account(s)/related entities and further, fraudulently used the Securities of the Complainant as their own margin money and received a sum of INR 380 Crores as premium and thus, Applicant/Accused No.4 along with other accused gained a sum of INR 380 crores illegally and wrongfully by causing illegal and wrongful loss to the Complainant to the tune of INR 344.07 Crores.

vi. FSL Report further confirmed that the signature of authorized signatories of Erstwhile Subsidiaries of the Complainant on the account opening forms/KYCs are also forged. This clearly shows that the intention of Accused Persons including the Applicant/Accused No.4, right from beginning, was only to cheat and misappropriate the Securities of Complainant.

vii. Upon fraud being surfaced, the top management of ISSL/Accused No.3 had conducted its forensic audit through its own Forensic Auditor, Grant Thornton, in respect of transaction between ISSL/Accused No.3 and Allied/Accused No.2. ISSL/Accused No.3, own Forensic Auditor, Grant Thornton, has reported several irregularities indicating collusion and conspiracy between Applicant/Accused No.4 & Allied/Accused No.2 through Accused No.1 and further, the above forensic audit report conducted on behalf of ISSL/Accused No.3 categorically pointed out several instances of collusion and

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conspiracy between the Applicant/Accused No.4 and Allied/Accused No.2 which are stated as under:

b. Unusual Collateral movements between ISSL and Allied;

i. ISSL allowed Allied to withdraw collaterals amounting to INR 736 Crs on Saturday (non-working day), which were bought back on Monday.

ii. ISSL allowed Allied to withdraw collateral amounting to INR 243 Crs and deposit back on the same day without any decrease in limit.

iii. ISSL allowed Allied to withdraw collaterals and deposit back INR 102 Crs in the same week.

c. Between Jul'18 to Dec'18- On 65 instances ISSL allowed intra-day benefit (extending limit without collaterals) totalling to INR 2418 Crs.

d. ISSL accepted illiquid collaterals from Allied which are not deployable as margin to the exchange and provided limit, based on the same.

e. ISSL increased limits of Allied unanimously with corresponding increase in the collaterals.

f. ISSL opened trading terminal of Allied and allowed them to roll over their position during Jan' 19, specifically after the termination notice was issued on 8-Jan-19.

g. ISSL choose to ignore significant unusual increase in the asset and liabilities of Allied financials for FY 18 and didn't acted upon it at all. A proper review of financial statements of Allied should have triggered an alarm and some sort of action should have been taken by ISSL.

h. Auditors observation was there in financials transactions that Allied had multiple doubtful transaction with related parties and the recovery is doubtful which ISSL ignored and have not acted upon.

i. ISSL despite having a previous relationship with Allied, have misrepresented in their CAM document (at the time of on-boarding) that they don't have any existing relationship with Allied.

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j. In 2010, SEBI ordered an adverse order against Allied for synchronised trades and penalised by SEBI. ISSL ignored this instance at the time of on boarding of Allied.

k. Allied was under Risk Reduction Management (RRM) for 137 trading days out of 299 trading days. RRM specifically that the trading member crosses 90% of the available margin limit. That means in a normal situation when margin can be utilised upto 40-50%, ISSL allowed Allied to go upto more than 100% of margin utilisation in multiple instances. During RRM period, TM (Allied) could have only done immediate and cancel order, but he was allowed to do trading further.

l. On 1st Jan 19, there was an email from ISSL stating that, on 28-dec-18 terminal was disabled. Then how Allied was allowed to trade for 1000 Crs without sufficient margins.”

13. *Inter alia* the complainant has submitted to the effect that on the other hand, SEBI, upon completion of forensic audit conducted by it in respect of transaction between ISSL/ Accused No.3 (where Applicant/Accused No.4 was working as Business Head) and Allied/Accused No.2, has also observed that ISSL/ Accused No.3 (where Applicant/Accused No.4 was working as Business Head) has not only actively participated in the fraud committed by Allied/Accused No.2 in respect of Securities belonging to the Complainant, but also facilitated Allied/Accused No.2 in executing fraudulent transfer of Securities belonging to Complainant in collusion with Accused No.1 and the Applicant herein. Consequently, SEBI has also issued a Show

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Cause Notice dated 09.12.2019 against ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head). It has further been submitted by the complainant that SEBI has also taken cognizance over the subject matter of unauthorized and fraudulent transfer and pledging of stolen Securities of Complainant by the Accused Persons which was reported by the Complainant vide its complaint dated 08.02.2019.

14. The complainant has further submitted that SEBI while dealing with similar facts arose in the matter of KARVY STOCK BROKING LIMITED, SEBI (WTM / AB / SEBI / MIRSD / HO / 42 /2019-20) vide its order dated 14.01.2020 held in para 11, which is reproduced as under:

"11. Regarding pledging of securities of its fully paid clients, a stock broker has no authority to pledge the securities of its fully paid clients. If a stock broker pledges securities of its fully paid clients, it amounts to misappropriation of clients' securities by the stock broker. Even if securities belonging to fully paid clients are pledged by the stock broker, such pledge does not pass any title to the pledge, as the stock broker in such case himself/itself does not possess any title/right over such securities. Thus, pledge of securities, belonging to fully paid client, is not treated as valid pledge in law "
(Emphasis supplied)

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The complainant further submits that admittedly, it had only Demat Accounts with Allied/Accused No.2 and had no trading account nor any power of attorney was given by OCL & DCEL to Allied/Accused No.2, and as such the case of Complainant is much stronger than in KARVY STOCK BROKING LIMITED, wherein investors had trading accounts and had also given power of attorney, which was misused by the broker, while in the instant case, the Complainant had only Demat Accounts with Allied / Accused No.2 and no trading account and admittedly, no power of attorney was ever given by OCL & DCEL to Allied / Accused No.2 in respect of such Demat Accounts. It was thus submitted on behalf of the complainant that the fraudulent transfer of Securities of Complainant from its Demat Accounts by the Accused Persons to their own account and to their related entities is illegal on the face of it.

15. It was further submitted by the complainant to the effect that the accused no.1 in collusion and in conspiracy with the Applicant/Accused No.4, had illegally, dishonestly and fraudulently transferred the Securities from demat accounts of it erstwhile Subsidiaries of the Complainant to their own account(s) and its related

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entities based on forged Delivery Instruction Slips and further, fraudulently placed these Securities as collateral with ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head) for meeting its own margin obligations in future and option contracts without any consent, knowledge or mandate of the Complainant, who neither issued any mandate for transfer of the Securities nor received any consideration for such transfer thereof.

16. *Inter alia* the complainant has submitted that the FSL Report filed along with the Charge Sheet, also confirmed that the signatures of the authorized signatories of the Complainant on all sixty-six (66) Delivery Instructions Slips are forged by Accused Persons which were used by the Accused Persons for fraudulent transfer of Securities from Demat Accounts of erstwhile subsidiaries of the Complainant to their own account(s)/related entities and also fraudulently used the Securities of the Complainant as their own margin money and further received a sum of INR 380 Crores as premium and thus, the Applicant/Accused No.4 along with other accused gained a sum of INR 380 crores illegally and wrongfully by causing illegal and wrongful loss to the Complainant to the tune of INR 344.07 Crores.

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The complainant has further submitted to the effect that the applicant/Accused No. 4 and Accused No.1 are the master minds in the whole fraud committed by them just to cause gain each other including their respective companies (Accused Nos. 1 & 3) illegally and wrongfully by causing illegal and wrongful loss to the Complainant to the tune of INR 344.07 crores.

17. The complainant has further submitted that ISSL/Accused No.3 (where Applicant/Accused No.4 was working as Business Head) had also conducted its forensic audit through its own Forensic Auditor, Grant Thornton, in respect of transaction between ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head) and Allied/Accused No.2. The Forensic Auditor, Grant Thornton, has also reported several irregularities indicating collusion and conspiracy between ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as business head) & Allied/Accused No.2. Consequently, ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head) has been facing multiple investigations by various authorities including SEBI, NSDL, EOW, SFIO etc. The complainant has further submitted to the effect that SEBI, upon completion of

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forensic audit conducted by it in respect of the transaction between ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head) and Allied/Accused No.2, has also observed that ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head) has not only actively participated in the fraud committed by Allied/Accused No.3 in respect of Securities belonging to the Complainant but also facilitated Allied/Accused No.2 in executing fraudulent transfer of Securities belonging to the Complainant in collusion with Allied/Accused No.2 and thus, the SEBI has also issued a Show Cause Notice dated 09.12.2019 against ISSL/Accused No.3 (where the Applicant/Accused No.4 was working as Business Head).

18. It is further contended on behalf of the complainant that the applicant/accused no.4 is guilty of serious offences such as conspiring in the commission of forgery for the purpose of cheating, and commission of breach of trust by agent in respect of Complainant's mutual fund units worth Rs. 344.07 crores entailing severe punishment up to life imprisonment as prescribed under sections 409/467 IPC. *Inter alia* the complainant has submitted that due to the complexity of

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transactions the role of other officials of ISSL/Accused No.3 including Applicant/Accused No.4, NSDL and Allied/Accused No.2 are being probed to unearth the amount of INR 380 crores received by them as premium by fraudulently using the Securities of the Complainant as its own margin money and as such investigation is pending qua them and that there is every likelihood that the Applicant/Accused No.4 may tamper with evidence, influence the witnesses and ultimately, may not turn up to face the trial, if released' on bail as he is a permanent resident of Ahmedabad, Gujarat. The complainant has further submitted that it is a settled law that once the Applicant/Accused No.4 has been charge sheeted by the Respondent, and cognizance has also been taken inter alia under Sections 409/467 IPC qua the Applicant/Accused No.4, the Applicant/Accused No.4 cannot claim entitlement of bail as a matter of right merely on the ground of being not arrested by the Respondent during investigation.

19. The petitioner on the other hand through its written synopsis dated 29.06.2020 submits that the charge sheet was filed without the arrest of the applicant indicating thus, that there was no recovery and discovery was required from him and that the status report submitted

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by the State also indicates that the applicant had joined the investigation as and when required and thus there is no possibility of the witnesses being influenced by the applicant as he has already left the company i.e. the accused no.3 (IL & FS Securities Services Limited- M/s ISSL) on 18.07.2019 and that there is not a whisper of a single averment about the possibility of the applicant influencing the witnesses and tampering with the documents in the status report submitted by the State.

20. The applicant has further submitted that the trial has not yet commenced and would take many years to conclude as there are as many as 34 witnesses and documents running upto thousands of pages. The applicant has further submitted that the charge sheet reveals that all the main offences as to forgery, criminal cheating, criminal misappropriation of mutual funds under Sections 406/420/467/468/471/120B of the Indian Penal Code, 1860 have been committed by the accused nos. 1 & 2 i.e. M/s AFSPL and none of the criminal offences have been committed by ISSL and the applicant.

21. *Inter alia* the applicant has submitted further to the effect that M/s AFSPL further utilized the alleged mutual funds of the

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Complainant to avail margin to carry out future & option trades on National Stock Exchange ("Exchange") by transferring them with ISSL which in turn pledged the said units with National Clearing Limited (" Clearing Corporation"). It has been submitted by the applicant that ISSL is a professional clearing member registered with Clearing Corporation as well as SEBI, who settles the trade carried out by the trading member on the exchange, whereas M/s AFSPL is a trading member registered with exchange and SEBI. For ISSL, the clients are the trading members with no knowledge about the end clients of the Trading members. The applicant further submits that ISSL had no knowledge about the background details of the collaterals provided by the Trading Members to avail margin limits and that in view of the relevant rules in existence, ISSL had no knowledge of the end clients, i.e. the complainant in this case.

22. Furthermore, the applicant has submitted that no wrongful loss has been caused to the Complainant as the mutual funds worth of Rs. 344.07 crores have been seized by the Police u/s 102 CrPC and no corresponding gain has occurred to ISSL & the Applicant and that it is ISSL which has suffered huge losses and has been the worst victim in

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the entire transaction as M/s AFPSL had already carried out the trade on exchange by availing the margins and ISSL is no more in a position to utilize the mutual funds to settle the trades of AFPSL with other trading members because of the freezing order passed by the Police.

23. The applicant has further submitted that he was the Vice President of the Business & Marketing team at ISSL during the period of the alleged transaction. The applicant further submits that he was merely a salaried employee of M/s ISSL and was never in charge of the Operations and Compliance Team of ISSL. Inter alia the applicant submits that the entire process of due diligence and KYC was performed by Operation Team. The securities and mutual funds operations as well as reporting to exchange was performed by the Operation Team. The Applicant further submits that he had no access to the collateral interface and exchange reporting module of ISSL. It is submitted by the applicant that in emails, the Applicant only suggested that intraday benefits should be extended to some clients as a part of the business strategy, subject to the confirmation of the final decision of the Operation Team of ISSL.

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24. *Inter alia* the applicant has submitted that vide its email dated 31.12.2018 he suggested that the ISSL should disassociate with its Client i.e. M/s AFSPL and that ISSL learnt about the identity of the end clients i.e. subsidiaries of Dalmia Cement (Bharat) Limited on 28.12.2018 when M/s AFSPL sought release of the mutual funds of the Complainant from ISSL.

25. The applicant has further submitted that he satisfies the TripleTest- of not being a Flight risk, of there being no scope of tampering of evidence and Influencing the witnesses at his end- as laid down by the Hon'ble Supreme Court in ***P. Chidambaram v. ED (Criminal Appeal no.1831/2019)*** as well as the basic principles of grant of bail after the submission of the charge-sheet, that the grant thereof must be a norm not an exception as propounded in ***Sanjay Chandra v. CBI (2012) 1 SCC 40.***

26. The applicant has further submitted that the dictum of the verdict of ***Lt. Gen. Tejinder Singh V. CBI 2014 SCC Online Del 4560*** which categorically holds that if the charge-sheet is filed without arrest and the accused appears in compliance of the summons, the Ld. Court has no other option except to release the Accused on bail

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irrespective of the fact that he files a bail application or not is wholly applicable to the case.

27. The applicant has thus sought that he be allowed to be released on bail subject to conditions as may be imposed as deemed fit by the Court.

ANALYSIS

28. It is essential to observe that the applicant was in a fiduciary capacity and has allegedly committed gross breach of trust in relation thereto in alleged connivance with other co-accused persons of an alleged amount of INR 344.07 crores, and it has to be taken into account the factum that the complainant is a public limited company, and that the members of the public have also consequently been allegedly defrauded of the amount of INR 344.07 crores by alleged fraudulent use of the mutual funds units of the complainant of INR 344.07 Crores by the accused persons inclusive of the applicant arrayed as the accused no.4 by *inter alia* creation of 350 shell companies.

29. It is also essential to advert to the show cause notice issued by the SEBI dated 09.12.2019 as issued to IL & FS Securities Services

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Limited i.e. ISSL arrayed as accused no.3 of which the applicant was working as a business head. The investigation conducted by the SEBI making the reference to the Grand Thornton Forensic Audit Report which audit was conducted to look into the dealings of ISSL i.e. the accused no.4 with AFSPL i.e. the accused no.2, the SEBI obtained the copy of NSE Clearing Limited's Inspection Report with respect to ISSL's functioning as a clearing member and the said investigation *inter alia* is stated to have revealed to the effect:-

“a. There were certain irregularities while on boarding AFSPL by ISSL. The said irregularities were regarding the audited financial statements submitted by AFSPL to ISSL (different CA certificates with different financial statements mentioning different shareholding patterns were submitted to ISSL and MCA/NSE by AFSPL), anomalies noted in the KYC pertaining to a question regarding existing relationship of AFSPL with IL&FS Group, anomalies noted regarding income mentioned in the KYC provided by AFSPL, ISSL ignoring significant unusual increase in the asset size of AFSPL during FY 2017-18 and AFSPL having multiple doubtful transactions with related parties where the recovery was doubtful. In terms of regulations 11.3.1 of Chapter 11 of NCL F&O Regulations, a Clearing Member is required to do proper due diligence when establishing a relationship with a new client. Also, clearing members must take reasonable steps to assess the background, genuineness, financial soundness of such person and his objectives, which was not done in the instant case. In view of the aforesaid, prima-facie, non-compliance with respect to carrying out proper due diligence was observed when ISSL established relationship with AFSPL which has allegedly resulted in violation of clauses A (2) & A (5) of the code of conduct as specified in Schedule li of Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992, read with regulation 10 F of SEBI (Stock

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Brokers) Regulations, 1992 and Regulation 11.3 .1 of Chapter 11 of NCL F&O Regulations.

b. There were 4 instances where collateral was released by ISSL to AFSPL without corresponding reduction in exposure/margin requirements. The aforesaid instances of release of collaterals over weekends were unusual. The said release of collateral by ISSL helped AFSPL to make Dalmia Group believe that their MF units were intact in their respective demat accounts. Details of which are as under:

Da te	Total Margin	Cash	Securities	MF Amount Released	Total Collateral	Shortfall on Saturday and Sunday
30 - De c- 17	1,81,27,20 ,261.54	71,62,00,0 00.00	3,40,27,11,2 66,266.92	3,29,62,41 ,561.48	82,26,69, 705.44	99,00,50,5 56.1 0
31 - De c- 17	1,81,27,20 ,261.54	71,62,00,0 00.00	3,40,27,11,2 66,266.92	3,29,62,41 ,561.48	82,26,69, 705.44	99,00,50,5 56.1 0
31 - M ar- 18	3,25,99,58 ,458.67	1,00,30,00 ,000.00	3,50,79, 16,668.34	3,35,05,98 ,756.50	1,16,03,17 ,911.85	2,09,96,40 ,546.82
01 - Ap r- 18	3,25,99,58 ,458.67	1,00,30,00 ,000.00	3,50,79, 16,668.34	3,35,05,98 ,756.50	1,16,03,17 ,911.85	2,09,96,40 ,546.82

It was also observed that intra-day limits provided by ISSL to AFSPL were enhanced without sufficient collateral inflow (naked benefit) and were reduced at end of the day. During July 02, 2018 to December 27, 2018, there were 65 instances/trading days where total amount of intraday benefit extended to AFSPL by ISSL amounted to Rs. 2417.87

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crores. The same had resulted in increased risk for ISSL In view of the same, it is alleged that there was a failure to collect margin by ISSL from AFSPL in accordance with Regulation 4.5.1 of NCL Regulations (F&O segment). In view of the aforesaid, prima facie, non-compliance by ISSL with respect to collection of margin was observed which is in violation of clauses A (2) & A (5) of the code of conduct as specified in Schedule II of Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992, read with regulation 10 F of SEBI (Stock Brokers) Regulations, 1992 and Regulation 4.5.1 of Chapter 4 of NCL F&O Regulations (F&O segment).

c. ISSL opened trading terminal for AFSPL and allowed them to roll over their position during January 2019, specifically after the termination notice was issued to AFSPL by ISSL. In terms of Bye-Law 3 of Chapter IX of NCL (F&O Segment) Bye-Law, ISSL had the option to close-out the positions in the month of January 2019 after failure by AFSPL to pay the margins. Therefore, ISSL by allowing AFSPL to roll over their position even after termination of their contract has prima facie violated clauses A (2) & A (5) of the code of conduct as specified in Schedule II of Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992 read with regulation 10 F of SEBI (Stock Brokers) Regulations, 1992 and Bye-Law 3 of Chapter IX of NCL (F&O Segment) Bye-Law.

d. Inter Corporate Deposits (ICDs), interest on ICDs, loan to IL&FS Employee welfare trust, interest on loan, sundry debtors were not considered under the header "doubtful debts and advances" for calculation of networth by ISSL. Instances of the same are as under:

S.No.	Particulars
1.	Networth as on September 30, 2018 after deducting ICDs, interest on ICDs, loan to IL&FS Employee welfare trust, Interest on Joan, Impact of Ind AS and Sundry Debtors of Rs. (154.06) Cr, Networth as on September 30, 2018 is 53 .0 1 Cr. as against Nerworth submission of member of Rs. 207.07 Cr
2.	After deducting ICDs amounting toRs. 750 Cr, Networth as on March 31,2018 is (573 .01) Cr as against Networth submission of member ofRs. 176.99 Cr.

If ISSL had duly considered the aforesaid ICDs under the head doubtful debts and advances, it would have revealed the shortfall in its networth and thereby resulting into noncompliance of Rule 12 of Chapter IV of The Rules of NSE Clearing Limited. Since, ISSL has

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failed to meet the requirement of minimum networth, the same is prima-facie in violation of clauses A (2) & A (5) of the code of conduct as specified in Schedule II of Regulation 9 (f) of SEBI (Stock Brokers) Regulations, 1992, read with regulation 1 OF of SEBI (Stock Brokers) Regulations, 1992 and Rule 12 of Chapter IV of The Rules of NSE Clearing Limited.

e. The aforesaid actions/lapses of the Noticee has allegedly facilitated AFSPL in executing the fraudulent transfer of mutual funds units from the account of DCEL, OCL and NEPL. Therefore, it is alleged that the Noticee has violated Regulation 3(a) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations).”,
that the applicant herein was the business head of accused no.3 i.e.

ISSL, cannot be overlooked presently and that he was also the Chief Business Statutory Officer of IL & FS Securities Services Limited and suggested that intra day benefits be extended over and above available collaterals to some selected client which resulted in facilitation to AFSPL with it having also been *inter alia* brought forth through the Grand Thornton Forensic Audit Report that the applicant potentially changed the data which was sent to the Exchange as well as to the Bank and sent the data to the Exchange without reducing the collaterals value in potential violation of the Exchange Rules and being the Chief Business Statutory Head and responsible for the company in connivance with AFSPL facilitated the AFSPL to commit fraudulent transfer of the mutual funds units.

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30. Taking the said aspect into account and the factum that the applicant is alleged to have committed an economic fraud which affects the moral fabric of society, coupled with the factum that economic offences corrode the very fabric of democratic governance and probity in public life and are considered to be the gravest offences against the society and the persons alleged to have committed such offences are necessarily required to be treated differently in the matter of bail despite the submission made on behalf of the petitioner placing reliance on the verdict of his Court in *Tejinder Singh* (supra) with specific observations therein in paragraph 20(v) which reads to the effect:-

“20. (v) The Court shall on appearance of an accused in non bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.c. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.”

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which is reiteration of observations of this Court in ***“Court on its own motion Vs. CBI” 109 (2003) DLT 4944***, it is essential to observe that what is brought forth through the observations therein is to the effect that merely because a person who was not arrested by the police or Investigating Agency during investigation nor produced in custody as envisaged in Section 170 of the Cr.P.C., 1973 ought not to be taken into custody merely because the charge sheet has been filed, the same however, does not spell out an embargo on the Court to reject a prayer made for bail by such an accused not arrested during investigation or not produced in custody, to be taken into custody in the circumstances where the facts of a case as alleged bring forth the gravity and magnitude of the alleged commission of an offence and consequently negate the grant of bail.

31. To similar effect are the observations of the Hon’ble Supreme Court in ***“CBI Vs. Ramendu Chatupadhyay”*** in CRL.A.1711/2019.

32. In the circumstances, the cases relied upon on behalf of the petitioner are distinguishable from the facts and circumstances of the instant case.

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33. As regards the contention raised on behalf of the petitioner that the petitioner falls within the ambit of the minutes of the Hon'ble High Powered Committee of this Court dated 18.05.2020, it is essential to observe that offences investigated by EOW have been specifically kept out of the domain of consideration of grant of even interim bail and vide the verdict of this Court in W.P.(CrI.)841/2020 a verdict dated 10.08.2020 titled as "*Malvinder Mohan Singh Vs. State & Anr.*", the prayer made therein seeking the quashing of the minutes of the Hon'ble High Powered Committee of this Court dated 18.05.2020 which excluded the persons falling within the category of cases investigated by CBI/ED/NIA/Special Cell Police/Terror related cases under anti national activities and unlawful activities, was declined whilst upholding the minutes of the Hon'ble High Powered Committee of this Court declining to consider the persons committing the offences alleged to be accused in cases which investigated by Special Agencies for grant of consideration of interim bail, was upheld.

34. As regards the contention raised on behalf of the petitioner that the petitioner was not a flight risk and there is no scope of his

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tampering evidence and influencing the witnesses, the same *per se* does not suffice to grant bail to the applicant in view of the magnitude of the alleged commission of breach of fiduciary trust placed. In the circumstances the bail application filed by the applicant seeking the grant of regular bail is rejected and as regards the prayer made by the applicant seeking the grant of interim bail for the reasons that his wife is unwell, it cannot be overlooked that the proceedings in the present application are pending since institution in June 2020 and apparently there is no urgency qua the treatment of the applicant's wife required.

35. Furthermore, on behalf of the applicant, the prayer made initially seeking the grant of interim bail has expressly during the course of the proceedings on 15.06.2020 was not sought to be pressed.

CONCLUSION

36. The bail application in the circumstances is dismissed.

37. Nothing stated hereinabove shall however amount to any expression on the merits or demerits of the case.

ANU MALHOTRA, J.

DECEMBER 01, 2020

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